

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:10CR3046
)	
v.)	
)	
CESAR AGUIRRE,)	TENTATIVE FINDINGS REGARDING
)	REVISED PRESENTENCE
Defendant.)	INVESTIGATION REPORT
)	

Objections have been filed by the defendant through his counsel to paragraphs 25, with respect to the base offense level; paragraph 41, regarding three criminal history points assessed; paragraph 42, regarding whether Aguirre was placed on probation for that offense and regarding a remaining sentence of two days; paragraph 44 and paragraph 45, as being insufficient to document the legitimacy of the convictions; paragraph 47, “because it relates to RPSR ¶ 44 regarding Aguirre being on probation when he committed the instance offense”; and paragraph 48, for assessing one point for committing the instance offense less than two years after being released from the sentence listed in paragraph 45.

The defendant requests an evidentiary hearing to present documentary evidence and live testimony from Mr. Aguirre to support the defendant’s objections and his motions for downward departure and/or variance for his claim of a mitigating role reduction. Expected evidence from Mr. Aguirre’s testimony is one hour or less.

The government objects only to the base level offense of 30 and an application of a four-level mitigating role reduction as requested by the defense counsel, but has no objections to the Revised Presentence Investigation Report. It seeks live testimony from Nebraska State Patrol Investigator M. C. Dowling, Nebraska State Patrol Sgt. J. R. Balthazor, and Nebraska State Patrol Investigator Clint Elwood, all for no more than one hour.

The evidentiary hearing will be granted on the terms requested. The Revised Presentence Investigation Report is found to be true and accurate, to all except the paragraphs objected to by the defense. Resolution of the objections and the motions will be resolved following the evidentiary hearing.

Dated October 12, 2010.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge